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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re S.R., a Person Coming Under the  
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

S.R.,

Defendant and Appellant.

E066422

(Super.Ct.No. RIJ1500776)

OPINION

APPEAL from the Superior Court of Riverside County. Matthew C. Perantoni,  
Judge. Affirmed.

Donna P. Chirco, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman, and Julie  
Koons Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

S.R. (mother) appeals the juvenile court's orders denying her Welfare and Institutions Code section 388 petition and terminating her parental rights over her two-year-old daughter. She argues the court erred in denying her petition and failing to apply the parental benefit exception to terminating parental rights found in section 366.26, subdivision (c)(1)(B)(i).<sup>1</sup> We find no error and affirm.

## **I**

### **FACTUAL BACKGROUND**

#### *A. The Dependency Petition*

On July 21, 2015, the Riverside County Department of Public Social Services (DPSS) filed a dependency petition for 18-month-old S.R. (born January 2014), alleging she was at substantial risk of harm within the meaning of section 300, subdivision (b). The petition alleged mother abused controlled substances (including methamphetamine, cocaine, and marijuana), suffered from mental health issues (including bipolar disorder and schizophrenia), and had an extensive criminal history (including felony drug and assault convictions). The petition also alleged mother had been arrested a few days earlier, on July 18, 2015, for being under the influence of a controlled substance, drug possession, and child endangerment.

DPSS's detention report described the circumstances of the arrest. After receiving referrals alleging mother was using drugs and neglecting and possibly abusing S.R, a

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<sup>1</sup> Unlabeled statutory citations refer to the Welfare and Institutions Code.

social worker and two deputies from the Riverside County Sheriff's Department arrived at the home where mother was living with S.R. and her aunt (S.R.'s great aunt), Ms. G.

Mother's behavior was bizarre and erratic throughout the interview. She told the social worker she had previously been in jail and in a "mental hospital." She said she had previously been diagnosed with bipolar disorder but believed she actually suffered from schizophrenia. She used to hear voices but said, "I haven't heard 'em in a while." She was not using medication for her mental health issues; instead, she took "vitamins" to keep her calm and cleaned the house for meditation. She said sometimes she "can't stop cleaning," adding "I just clean and clean and then that doesn't help." The vitamins turned out to be a generic form of the antidepressant and anxiety medication Lexapro the deputies found in her bathroom. The social worker observed cutting scars on mother's arm.

When asked the identity of S.R.'s father, mother said, "Uh. That's freakin' hard to explain." She believed the father's first name was Mike but did not know his last name.<sup>2</sup> She then made unrelated remarks about other family members, such as saying her aunt and mother "were twins and died within three days of each other. 336660. The axel is 33 and 666 is just totally forbidden. My great grandma Mona came over on one of the boats, the Mayflower I think."

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<sup>2</sup> Although DPSS was able to obtain more information about Mike from Ms. G., the whereabouts of S.R.'s alleged father remain unknown.

Mother also made nonsensical remarks about S.R. She told the social worker S.R. had been “hanging out with her friend Chris” the night before. When the social worker reminded mother S.R. was only an infant, mother responded, “It makes me so mad because my daughter is not a baby and can use the cell phone and ride a skateboard and I don’t understand why everyone acts like she is a baby.”

Mother denied being under the influence of drugs but admitted to past drug use. She said her own mother was evil and used to give her drugs when she was a child. She used to “slam” methamphetamine and do “cocoa puffs,” which she described as marijuana sprinkled with cocaine. She admitted she had used controlled substances while pregnant with S.R. but said she stopped when she learned she was pregnant.

After conducting pupil dilation and field sobriety tests, the deputies determined mother was under the influence of a controlled substance they believed to be cocaine. When they searched her room they found cocaine inside a screwdriver in a backpack located within reach of S.R., who was standing in her crib with the cord to the window blinds wrapped around her neck and the end of the cord in her mouth. S.R. was holding the broken wand that controls the blinds. The deputies arrested mother for drug use, drug possession, and child endangerment.

After the arrest, the social worker interviewed S.R.’s great aunt, Ms. G., who also lived at the residence. Ms. G. reported just the day before S.R. had been running around with the screwdriver the deputies had confiscated. When she took it away from S.R., mother became angry, grabbed it, and said, “That’s not yours.” Ms. G. also reported

mother was violent and did not appropriately supervise S.R. She said mother becomes “three times” more violent “when she’s using drugs and not taking her medication.” She said mother had “beat the shit” out of mother’s sister (S.R.’s maternal aunt) about three weeks ago. She had never seen mother act violently toward S.R. but she believed it was possible because mother “does get very violent.”

The social worker also interviewed S.R.’s grandparents, mother’s father and his wife (the stepgrandmother). The grandparents explained they had taken care of S.R. while mother was incarcerated—from S.R.’s birth until May 7, 2015. After her release, mother lived with them for a time before moving in with Ms. G. The stepgrandmother reported mother allowed S.R. to play with inappropriate objects like scissors and pocket knives and became angry when they tried to tell her those items were dangerous. Mother would leave S.R. in the bedroom and close the door because she “did not want to be bothered with her.” S.R. once “pulled down a heavy jewelry box” when she was unattended in the bedroom. The stepgrandmother also reported being afraid of mother’s violent outbursts. Mother had threatened her before and could “become very aggressive.”

DPSS searched mother’s record and discovered she had an extensive criminal history including recent drug and assault convictions. In 2011 and 2012, mother was convicted of assault with a deadly weapon. In June 2014, she was convicted of felony possession of a controlled substance in jail and sentenced to three years in prison. She served 162 days in prison and was granted two years of probation. One of the terms of her probation was not to possess controlled substances.

On July 22, 2015, the court detained S.R. and DPSS placed her in a foster home.

*B. Jurisdiction and Disposition*

On August 20, 2015, DPSS filed a jurisdiction/disposition report containing information the social worker had learned from additional interviews. Mother told the social worker methamphetamine was her drug of choice and she had been smoking then eventually injecting it since she was 13 years old. She admitted abusing alcohol to the point of blacking out. She had started two substance abuse treatment programs in the past, but never completed them.

As she did in her first interview, mother admitted having a history of mental health issues. She reiterated her view that she had been misdiagnosed with bipolar disorder and instead suffered from schizophrenia. She acknowledged needing a therapist, but was concerned about taking medication, explaining, “I like a little bit of my manic energy.” Ms. G. and the stepgrandmother both believed any treatment plan for mother should involve medication to stabilize her mood and aggression. Ms. G. reported mother had recently been physically violent with another one of mother’s sisters.

DPSS recommended reunification services, but noted the recommendation could change if mother’s incarceration exceeded the six-month reunification period section 361, subdivision (e)(1) mandates for dependent children under three years old. The social worker reported mother was awaiting sentencing in San Bernardino County (on a probation violation) and in Riverside County (on the recent drug use, possession, and child endangerment charges).

On September 2, 2015, the San Bernardino Superior Court sentenced mother to a three-year term with 607 days credit. Her scheduled release date from the West Valley Detention Center was May 2, 2016.

At the outset of her incarceration, mother broke a fire sprinkler in an attempt to hang herself and was put on suicide watch followed by placement in disciplinary housing. As a result, she lost visitation privileges and her first visit with S.R. did not take place until September 20.

In October 2015, DPSS filed an addendum report changing its recommendation to denying reunification services because “mother will be incarcerated longer than [the Welfare and Institutions Code] allows for her to reunify with her child.” DPSS also recommended adoption as S.R.’s permanent plan.

At the jurisdiction and disposition hearing in November 2015, mother’s counsel submitted on DPSS’s recommendations. The court declared S.R. a dependent, removed her from mother’s care, denied reunification services, and set a section 366.26 hearing.

In December 2015, DPSS placed S.R. with Ms. G., her maternal great aunt.

In March 2016, mother reported she was participating in Bible study and planned to enroll in a substance abuse treatment program upon her release. Family members were taking S.R. to visit mother in jail about once or twice a month. Mother behaved appropriately during visits and S.R. appeared to remember her.

In April 2016, DPSS filed a section 366.26 report containing the results of its adoption assessment. The social worker reported Ms. G. provided S.R. with a stable and

nurturing home and was committed to adopting S.R. Ms. G. had regularly visited S.R. during the period S.R. was in foster care. S.R. referred to Ms. G. as “mommy” and interactions between the two “reflect[ed] that of a parent child relationship.” DPSS recommended adoption and termination of parental rights.

C. *Mother’s Section 388 Petition and Termination of Parental Rights*

Mother was released from jail on June 24, 2016. On June 29, the day before the 366.26 hearing, mother filed a section 388 petition asking the court to change its prior order denying reunification services. Mother alleged she participated in counseling services while incarcerated that strengthened her parenting, life, and personal skills. She also alleged she has a strong bond with S.R. and maintained visits with her while in jail. She attached to her petition: proof of enrollment in a 52-class parenting program, dated June 29, 2016; an attendance sheet for two Alcoholics Anonymous meetings in November 2015; a certificate of completion for a self-study course entitled “Amazing Facts Bible School,” dated March 22, 2016; a certificate of completion for the Salvation Army’s “Life of Christ” course, dated January 29, 2016; and certificates of completion for five prison ministry correspondence courses entitled “Born to Win,” “Men Who Met The Master,” “Greatest Man Alive,” “What The Bible Teaches,” and “Journey Through The Bible.”

At the hearing on her petition, mother testified she had remained sober in jail. She said the courses she had completed were faith-based classes “address[ing] . . . self help and parenting and stuff like that.” She said she had also attended mental health



counseling “[that] would help me get on my medication right. Get—because I was a substance abuse user, it would help . . . like with anger management, it helped me get my chemicals right and balanced.” She was able to maintain her bond with S.R. by visiting with her and speaking with her on the phone “a couple of times a month.” During visits, S.R. called mother “Mommy, my mom” and told mother she loved her. Mother had enrolled in a parenting course as soon as she got out of jail.

After hearing mother’s testimony and reviewing the petition, the court stated: “It appears as though mother is in the process of . . . beginning to turn her life around and . . . making changes, but I don’t believe the changes have been made that would justify vacating the current court order. Dependency doesn’t stop when a parent . . . is incarcerated. The goal is to move towards permanency in a stable home, and the minor is in a stable home.” The court denied the petition, found the parental benefit exception did not apply, and terminated mother’s parental rights.

## **II**

### **DISCUSSION**

#### *A. The Court Properly Denied Mother’s Section 388 Petition*

Mother contends the court abused its discretion in denying her section 388 petition. We find no error.

Section 388 permits a parent of a dependent child to petition for a hearing to change, modify, or set aside any previous court order. (§ 388, subd. (a).) “A section 388 petition must show a change of circumstances and that modification of the prior order

would be in the best interests of the minor child.” (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 223.) “[T]he change in circumstances must be substantial,” as in “changed,” not “changing” circumstances. (*Ibid.*) We review the juvenile court’s ruling for abuse of discretion and will uphold the ruling “unless the [juvenile] court exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination.” (*In re A.S.* (2009) 180 Cal.App.4th 351, 358; *In re Amber M.* (2002) 103 Cal.App.4th 681, 685-686 (*Amber M.*) [“The denial of a section 388 motion rarely merits reversal as an abuse of discretion”].)

Here, the juvenile court acted well within its discretion when it denied mother’s petition because mother failed to present any evidence she had addressed her substance abuse and mental health issues, which were the two main problems leading to S.R.’s dependency. Mother has struggled with drug abuse for about half of her life and has allowed her addiction to place S.R. at risk of serious harm. Mother used drugs when she was pregnant with S.R. And, when DPSS and law enforcement responded to her residence in July 2015, she was under the influence of what police believed to be cocaine. The police found S.R. standing in her crib with the cords from the window blinds wrapped around her neck, and a screwdriver full of cocaine within her reach.

Mother also suffers from serious mental health issues. At the time of S.R.’s detention, she believed she suffered from schizophrenia and was self-medicating with Lexapro. Her family members felt threatened by her aggression and Ms. G. reported witnessing mother physically beat two of her sisters. Moreover, mother appears to be

resistant to acknowledging the full extent of her mental health issues. Despite having been diagnosed with bipolar disorder and hearing voices, she was worried about taking medication because she liked “a little bit of [her] manic energy.”

Given the significance of mother’s substance abuse and mental health issues, she needed to show the court more than that she had remained sober in jail and had attended two Alcoholics Anonymous meetings and an unspecified number of counseling sessions. Her issues require her to seek professional help in both areas. For example, she would benefit from completing an inpatient substance abuse treatment program and from working with a psychiatrist to obtain a proper diagnosis and medication program to stabilize her mood and reduce aggression. Mother argues she “was able to correct her medication” while in jail, however, the only evidence on this point was her testimony that in-custody counseling “would help me get on my medication right.” Without the benefit of evaluation from professionals in the field of substance abuse and mental health, the court had no basis to find her circumstances had substantially changed. While we commend her for remaining sober and completing numerous courses on her own initiative during her incarceration, those actions are not adequate to address her problems.

Additionally, mother failed to demonstrate how reunification services would be in S.R.’s best interest. The only evidence she presented on this point is her testimony S.R. called her “Mommy” and said she loved her during visits. These facts are simply not enough to satisfy the best interest element at this stage of the dependency where “the focus shifts to the needs of the child for permanency and stability.” (*In re Stephanie M.*

(1994) 7 Cal.4th 295, 317.) The record shows mother has been incarcerated for the majority of S.R.'s young life. According to the stepgrandmother, mother cared for S.R. for only *two months*, from her release in May 2015 to her next arrest in July 2015. Even if we disregard the stepgrandmother's statement and assume S.R. spent the full 18 months in mother's care, we question whether an infant can form a strong bond with a parent in such a brief time.

By the time of the section 366.26 hearing, S.R. was thriving in her prospective adoptive home. Ms. Garica regularly visited S.R. in the months she was in foster care and, now that she is caring for S.R., the two have developed a parent-child relationship. Ms. G. is providing S.R. a stable and loving home and is committed to adopting her. Based on this record, the court could reasonably determine it was not in S.R.'s best interest to introduce further delay in the adoption process by giving reunification services to a parent who had not attempted to treat the problems that led to the dependency. There was no error in the court's denial of mother's petition.

*B. The Parental Benefit Exception Does Not Apply*

Mother contends the court erred in failing to find the parental benefit exception to terminating parental rights applied. We disagree.

“Adoption, where possible, is the permanent plan preferred by the Legislature.” (In re L. Y. L. (2002) 101 Cal.App.4th 942, 947.) Once the juvenile court finds a child is adoptable, the parent bears the burden of proving by a preponderance of the evidence one of the exceptions to terminating parental rights applies. (In re Bailey J. (2010) 189

Cal.App.4th 1308, 1314.) “[I]t is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

The exception at issue here, commonly called the parental benefit exception, requires the parent to prove “termination would be detrimental to the child” because the parent has “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) California courts have interpreted this exception to apply to only those parent-child relationships the severance of which “would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) In order for the exception to apply, the parent must “stand in a parental role to the child.” (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1420.)

Mother does not satisfy the exception because she does not stand in a parental role to S.R. When she was arrested, S.R. had spent only about two months in her care and, at 18 months, was too young to have developed a strong emotional attachment to mother or view her as occupying a parental role. Even if S.R. had spent every moment from birth to detention in mother’s care, the child was too young at the time of detention to have formed the type of bond with mother that is necessary to satisfy the parental benefit exception. Mother points out that S.R. called her “Mommy” at visits, but this evidence does not establish S.R. would be “greatly harmed” if mother’s parental rights were terminated. (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575.) Rather, the record

reveals Ms. G., not mother, stands in a parental role to S.R. According to DPSS's adoption assessment, S.R. and Ms. G. had developed a parent-child relationship and S.R. called Ms. G. "Mommy." Based on this evidence, the court properly concluded no exceptional situation existed to forego adoption.

Mother's reliance on *Amber M.*, *supra*, 103 Cal.App.4th 681 and *In re S.B.* (2008) 164 Cal.App.4th 289 (*S.B.*) does not alter our conclusion because, unlike this case, those cases involve ample evidence of a strong parent-child bond. In *Amber M.*, the children had been in the mother's care for years before detention and the psychologist, therapists, and court-appointed special advocate all opined the parental relationship "clearly outweigh[ed]" the benefit of adoption. (*Amber M.*, at p. 690.) In *S.B.*, the daughter had spent three years in her father's care and through the dependency had expressed her strong desire to return to her father instead of being adopted. (*S.B.*, at p. 298.) Here, in contrast, S.R. was only briefly in mother's care and has made no indication she prefers to live with mother over her prospective adoptive parent.

**III**  
**DISPOSITION**

We affirm.

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SLOUGH  
J.

We concur:

RAMIREZ  
P. J.

MILLER  
J.